

Statement Regarding Ownership of the Present Application

At the time the invention claimed in the present application was made, the subject matter of the present application was owned, or subject to an obligation of assignment to, InfraReDx, Inc. This assignment is recorded at Reel/Frame No. 014232/0559 and 014244/0993.

Remarks/Arguments

Claims 1, 3-8, 10-12, 15, 17, 19-20, 22-38, 41-43, 45-48, and 51-56 are pending and under examination in the present application. Claims 2, 9, 13, 18, 21, 39-40, 44, and 49-50 are cancelled without prejudice.

Applicants respectfully request that the Examiner enter the amendments to the specification and the amended drawing sheets filed on 2/4/2009 in reply to the present Office Action. Applicants request that the Examiner *not enter* the claim amendments made in the reply filed on 2/4/2009, and instead enter the claim amendments presented with the present reply.

Claims 1, 4, 5, 6, 10, 12, 15, 17, 19, and 20 have been amended. Claim 1 has been amended to include the limitations of claim 2, though the term "slot" has been changed to "elongated groove." This term finds support on page 1, line 19 of the specification. Claim 20 has been amended to include the limitations of claim 21. Claim 6 has been amended to correct certain informalities objected to by the Examiner. Claims 4, 5, 10, 12, 15, 17, and 19 have been rewritten to correct claim dependencies; claim 4 has also been amended to replace the term "slot" with the term "elongated groove" in order to be consistent with claim 1. No new matter has been added by these amendments.

New claims 51-57 have been added. New claim 51 is commensurate in scope with original claim 14, and has been rewritten in independent form. New claim 52, likewise, is claim 16 rewritten as an independent claim. New claim 53 is claim 18 rewritten in independent form. New claim 54 is claim 31 rewritten in independent form. New claim 55 is claim 32 rewritten in independent form. New claim 56 is claim 9 rewritten in independent form. New claim 57 depends from new claim 51, and finds support in original claim 22 as well as in the specification at page 28, lines 1-2. No new matter has been added by these additional claims.

In the previous Office Action mailed on December 4, 2008, Examiner stated that claims 33-38 and 41-48 were allowable. Examiner also objected to claims 2, 4-12, 14, 15, 17-19, 21, 31, and 32 as being dependent upon a rejected base claim, but that these claims would be allowable if rewritten in independent

format. Applicants have rewritten claim 1 to include the limitations of claim 2, though applicants have changed the term “slot” in claim 2 to “elongated groove.” Although applicants consider these terms to be functionally equivalent, this language helps distinguish the “slot” claimed in claim 2 from the slot claimed in claim 11, which are distinct and separate features of certain embodiments of the invention. Applicants have rewritten claim 9 as an independent claim in new claim 56, and rewritten claims 10-12 to depend therefrom. Applicants have rewritten claim 14 in independent form as claim 52, and thus claim 15 which depends therefrom should be allowed. Applicants have rewritten claim 18 in independent form as new claim 53, and amended claim 19 to depend therefrom. Likewise, applicants have amended claim 20 to include the language of claim 21. Claims 31 and 32 have been rewritten in independent form as claims 54 and 55. Applicants thus respectfully request allowance of these claims and any claims that depend therefrom.

Obviousness Rejection

The Examiner has rejected claim 16 under 35 U.S.C. §103(a) as obvious over Zuluaga et al., U.S. Patent Application Publication No. 2002/0183622 (“Zuluaga”). Applicants traverse.

At issue is whether Zuluaga may be used to deny patentability of any claims of the present application under 35 U.S.C. §103. Under that section, “subject matter developed by another person, which qualifies as prior art only under [35 U.S.C. 102(e)]..., shall not preclude patentability under [35 U.S.C. §103] where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.” See 35 U.S.C. §103(c). Zuluaga was filed on May 31, 2001 and published on November 25, 2003. The present application was filed on December 31, 2001. As such, Zuluaga is only available as prior art against the present application under 35 U.S.C. §102(e). Furthermore, at the time the invention claimed in the present application was made, the subject matter of the Zuluaga application and the present application

were owned, or subject to an obligation of assignment to, InfraReDx, Inc. As such, Zuluaga et al. cannot be used to maintain a rejection of any of the present claims, including claim 52 (which includes all limitations of previously presented claim 16) as obvious.

In view of the amendments and the remarks, it is submitted that the present application is now in condition for allowance. Reconsideration and allowance of the pending claims are requested. The Director is authorized to charge any fees or overpayment to Deposit Account No. 02-2135.

Respectfully submitted,

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